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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,491	03/03/2006	Christian Degel	B1180/20050	9136
3000 7590 11/03/2008 CAESAR, RIVISE, BERNSTEIN, COHEN & POKOTILOW, LTD. 11TH FLOOR, SEVEN PENN CENTER 1635 MARKET STREET PHILADELPHIA, PA 19103-2212			EXAMINER GERIDO, DWAN A	
			ART UNIT 1797	PAPER NUMBER
			NOTIFICATION DATE 11/03/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@crbcp.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/564,491	<b>Applicant(s)</b> DEGEL ET AL.	
	<b>Examiner</b> Dwan A. Gerido, Ph.D.	<b>Art Unit</b> 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-11,13-20 and 22-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-11,13-20 and 22-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5-23-2006</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1, 3, 6-8, 10, 11, 13-17, 19, 20, 23-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mansky et al., (US 6,878,344) in view of Schulz (DE 4,300,231).

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5. With regards to claims 1 and 11, Mansky et al., teach a substrate comprising, a plurality of plates in a stack wherein the plates have a compartmental arrangement with a plurality of sample reservoirs (fig 1A), an anchoring axis to connect the plates (fig 1A #34), and a bearing bore through which the anchoring axis passes (fig 1A, 2A). Mansky et al., do not teach at least one substrate being able to pivot out of the stack about the anchoring axis.

Schulz teaches a stack of petri dishes wherein at least one petri dish can pivot out of the stack (, page 3 lines 21-23, page 8 lines 21-24). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Mansky et al., in view of Schulz to form a stack of substrates where at least one can pivot out of the stack in order to selectively access samples in an individual plate within a stack.

6. With regards to claims 3, 6-8, and 10, Mansky et al., teach the plates being rectangular with a bearing bore in a corner (fig 1A), the anchoring axis being rotatably arranged and having a projection on its upper end (column 5 lines 44-47, fig 1A #34).

7. With regards to claims 4 and 5, Mansky et al., in view of Schulz teach a substrate wherein the insertion opening for the bearing bore is formed vertically. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the insertion opening laterally in order to remove a single plate from the stack without disassembling the entire structure. In addition, it would have been obvious to one of ordinary skill to form the opening with a smaller width compared to the bearing bore, and to form the width of the anchoring axis equal to that of the opening in order to provide a tight fit between the anchoring axis and the substrate plates.

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8. With regards to claims 13, 14, 16, and 17, Mansky et al., teach the plates having an engagement means that block lateral shifting of the plates wherein the engagement means has a profile in a lateral surface and a complementary profile on adjacent plates (fig 1A #62). Mansky et al., also teach the anchoring axis as a one piece rod that extends over the height of the stack (fig 2A #34). Regarding claim 16, Schulz teaches the Petri dishes comprising projections and recesses so that Petri dishes in a stack are engaged which is being read on the claimed positive-fit slide guide (page 8 lines 1-8).

9. With regards to claim 15, Mansky et al., teach the anchoring axis as a bolt or screw which can be rotated from a fixed position to tighten or loosen the plates. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Mansky et al., in view of Schulz in order to tighten or loosen the plates in order to remove a single plate without disassembly of each individual plate.

10. With regards to claim 19 and 20, Mansky et al., do not teach the anchoring axis comprising a plurality of axis segments. The MPEP states that duplication of parts has no patentable significance unless a new and unexpected result is produced. Therefore, it would have been obvious to form the anchoring axis from a plurality of axis segments as duplication of parts requires only routine skill in the art (see MPEP 2144.04 VI B). In addition, it would have been obvious to form the anchoring axis of Mansky et al., to correspond to the height of the plates, diameter of the bore, and complementary to recesses and protrusions in order to fit the anchoring axis within the stack without altering how the plates stack together.

11. With regards to claims 23 and 24, Mansky et al., teach plates made from aluminum, titanium, steel Teflon or nylon. The MPEP states that it is obvious to select a known material

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based on its suitability for its intended use (see MPEP 2144.07, *In re Leshin*). It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the plates from plastic as plastics are well known for being inexpensive, inert, and easy to manufacture. In addition, it would have been obvious to form the side lengths less than 10cm in order to maximize storage of a plurality of plates within a freezer.

12. With regards to claims 25-30, Mansky et al., do not teach storage and freezing of samples on substrate plates.

Schulz teaches storage of biological samples in liquid form on Petri dishes (page 3 lines 1 and 2), but does not explicitly teach freezing the samples. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Mansky et al., in view of Schulz to freeze the substrate plates in order to preserve samples over long time periods.

Regarding claims 26, 27, and 28, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the stacks before or after applying samples in order to organize the plates and samples before storage. In addition, it would have been obvious to pivot an individual plate in a frozen or thawed state in order to gain access to the samples in either the frozen or thawed state.

13. Claims 9 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mansky et al., (US 6,878,344) in view of Schulz (DE 4,300,231) as applied to claim 1 above, and further in view of Astle (US 6,699,437).

14. With regards to claims 9 and 22, Mansky et al., in view of Schulz do not teach the substrate comprising a data memory.

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Astle teaches a microplate cassette comprising a memory device in operational contact with a processing device (abstract, column 3 lines 57-60). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Mansky et al., in view of Schulz, in further view of Astle in order to store processing steps for the assembly of plates as taught by Astle.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwan A. Gerido, Ph.D. whose telephone number is (571)270-3714. The examiner can normally be reached on Monday - Friday, 9:00 - 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lyle A Alexander/  
Primary Examiner, Art Unit 1797  
DAG